

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-104268-07

Date:

May 31, 2007

Re:

TY:

Legend

Taxpayer =

Parent =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

CPA Firm =

Law Firm =

Individual A =

Individual B =

Dear :

This letter responds to a letter dated January 18, 2007, submitted by Taxpayer's authorized representative requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under section 301.9100-3 of the Regulations on Procedure and Administration ("regulations") to file a Form 4876-A, "Election to be Treated as an Interest Charge DISC," for Taxpayer's Year 1 tax year. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by

an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Parent engaged the services of Law Firm and CPA Firm to establish Taxpayer as an interest charge domestic international sales corporation ("DISC") pursuant to sections 991 through 997 of the Internal Revenue Code ("Code"). At no time did Taxpayer or Parent have any employees dedicated to federal tax matters or DISC filings. Parent's management was unaware of the requirements in section 1.921-1T(b)(1) of the Temporary Income Tax Regulations that Taxpayer needed to satisfy to qualify as a DISC. Individual A, who was Parent's Chief Operating Officer, believed that Law Firm's scope of representation included incorporating Taxpayer as an entity eligible to elect DISC status for federal income tax purposes. Individual A believed that CPA Firm's scope of representation included performing all other functions necessary to qualify Taxpayer as a DISC for federal income tax purposes.

Individual B is a Managing Director in CPA Firm. Individual B understood CPA Firm's scope of representation to be limited to providing Taxpayer with a workplan explaining the necessary steps to create a DISC and providing Taxpayer with a sample Sales Franchise Agreement. CPA Firm provided Taxpayer with such a workplan and provided Individual A with a sample Sales Franchise Agreement. CPA Firm requested that Parent or Taxpayer provide a copy of the sample Sales Franchise Agreement to the attorneys at Law Firm to execute a Sales Franchise Agreement between Parent and Taxpayer. Based on what Individual B believed CPA Firm's scope of representation to be, CPA Firm did not provide Taxpayer or Parent with any further assistance to qualify Taxpayer as a DISC, and in particular did not advise Taxpayer to execute a Form 4876-A. Based on CPA Firm's representation, Individual A believed that execution of a Sales Franchise Agreement was the only action necessary for Taxpayer to be treated as a DISC.

Upon execution of the Sales Franchise Agreement between Taxpayer and Parent, Taxpayer began operating as a DISC. Taxpayer filed a Form 1120-IC-DISC, "Interest Charge Domestic International Sales Corporation Return," on Date 1 for Taxpayer's Year 1 tax year, which was Taxpayer's first tax year. During Year 2, Taxpayer received a notice dated Date 2 from the Service requesting a copy of the originally filed Form 4876-A or a copy of the acceptance letter. Individual A first reviewed the notice on Date 3. Although the notice stated that there had been prior correspondence, Individual A was unaware of Parent's receiving any prior notices from the Service relating to Taxpayer. Immediately after reviewing the notice, Individual A requested a copy of the Form 4876-A from Individual B, at which time Individual A learned that CPA Firm had not executed a Form 4876-A for Taxpayer nor directed Taxpayer to execute a Form 4876-A.

Section 992(b)(1)(A) of the Code provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as the Secretary may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

Section 1.921-1T(b)(1) of the Temporary Income Tax Regulations provides, in part, that a corporation electing DISC status must file Form 4876-A. A corporation electing to be treated as a FSC, small FSC, or DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in section 1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Section 1.992-2(a)(1)(i) of the Income Tax Regulations provides that except as provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a DISC shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876 when filed with the service center.

Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3. Requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in section 1.921-1T(b)(1) is a regulatory election as defined in section 301.9100-1(b). Therefore, the Commissioner has

discretionary authority under section 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in section 301.9100-3.

Based on the facts and information submitted, we conclude that Taxpayer satisfies section 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the election and shareholder consent statements required under sections 1.921-1T(b)(1) and 1.992-2(a)(1)(i) for Taxpayer's Year 1 tax year.

The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to claim DISC status or benefits. See Treas. Reg. §301.9100-1(a). A copy of this ruling letter should be associated with the election and shareholder consent statements.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John M. Breen
Chief, Branch 6
Office of Associate Chief Counsel
(International)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

cc: